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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,692	07/25/2003	Robert A. Baillie	5381	9439

7590 07/22/2004

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2 Bucks Lane  
Marlboro, NJ 07746

EXAMINER

GRILES, BETHANY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 07/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/626,692

Applicant(s)

BAILLIE ET AL.

Examiner

Bethany L. Griles

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

1. The use of the trademark "ASTROTURF" has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6, 10, 11, and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Markowitz US 5782206.
4. Regarding claim 1, Markowitz discloses a bottom surface 16; an enclosing side (sides of cover 14); an entranceway opening 26 having an inwardly facing edge surface including brush means 18, 20 positioned to physically contact at least one of the fur and paws of a cat entering into and exiting from the litter box via said opening 26.

5. Regarding claim 2, Markowitz discloses the entranceway 26 has at least two inwardly facing edge surfaces, at least one of which includes said brush means 18, 20 for physically contacting the fur of said cat.
6. Regarding claim 3, Markowitz discloses the entranceway opening 26 has three inwardly facing edge surfaces, each of which includes said brush means (see element 160 in figures 5, 6 and 7).
7. Regarding claim 4, Markowitz discloses the entranceway opening 26 extends upwardly from said predetermined point substantially to an uppermost edge of the enclosing side 14 surface (see figure 1).
8. Regarding claims 5 and 6, Markowitz discloses the side surface 14 extends upwardly from the bottom surface 16 at substantially or in excess of 90 degrees thereto, and wherein said entranceway opening 26 includes a pair of opposing side edge surfaces joined by a bottom edge surface (again, Examiner refers to figure 1).
9. Regarding claims 10 and 17, Markowitz discloses the brush means 18, 20 is removably insertable within said entranceway opening 26 for holding in place thereat (col 3, line 65- col 4, line 8 describe the assembly).
10. Regarding claims 11 and 18, Markowitz discloses that the brush means includes a washable abrasive, in that the brush bristles are abrasive to the fur of the animal, and these brushes 18, 20 are removable from the box assembly and could therefore be washed.
11. Regarding claims 14, 15, and 16, Markowitz discloses a bottom surface 16; an enclosing side (sides of cover 14); an entranceway opening 26 having an inwardly

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facing edge surface including brush means 18, 20 positioned to physically contact at least one of the fur and paws of a cat entering into and exiting from the litter box via said opening 26, and a second entranceway opening through the downwardly extending surface in reverse orientation to the upwardly extending entranceway opening (see figure 14), and with second entranceway opening has an inwardly facing edge surface including brush means 310, 312, 314, 316.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 7-9, 12, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markowitz US5782206.

14. Regarding claims 7-9 and 20, Markowitz substantially discloses the features of the litter box as previously discussed in claim 1, and Markowitz also discloses the device is for use with various sizes of pets (col 1, line 26-27).

15. Markowitz does not disclose the specific dimensions as disclosed by the Applicant.

16. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device at the dimensions disclosed by the Applicant, in order to accommodate a specific sized animal. Since the Applicant offers no criticality

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to the specific dimensions and ratios of measure offered in the immediate claims, Examiner asserts that the fact that Markowitz allows for variations in the dimensions of his device renders the specific measurements as provided by Applicant to be non-critical to the function and use of the device.

17. Regarding claims 12 and 19, Markowitz discloses a washable abrasive, in that the brush bristles are abrasive to the fur of the animal, and these brushes 18, 20 are removable from the box assembly and could therefore be washed.

18. Markowitz does not disclose that the abrasive structure is plastic.

19. It would have been obvious to one of ordinary skill in the art, and an obvious matter of design choice to make the abrasive portion of the brush of plastic, as it is old and notoriously well known in the art to mould combs, brushes, and other grooming implements from plastic. Furthermore, the Applicant affords no criticality to the fact that the abrasive portion be constructed of plastic material.

20. Claims 12, 13, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markowitz in view of Kohn US5769026.

21. Regarding claims 12, 13, and 19, Markowitz substantially discloses the invention, as previously discussed in the preceeding claims.

22. Markowitz does not disclose the use of removable, washable "Astoturf"™ carpeting.

23. Kohn discloses a litter box enclosure in which a removable and washable portion "Astroturf"™ carpeting is used to clean the feet of an exiting cat (col 2, lines 60-65, Kohn).

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24. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Kohn to the invention of Markowitz in order to utilize an easily available and highly functional product to groom the animal as desired.

### ***Conclusion***

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Owens US5458088; Piccone US4301766; Markowitz US6698384.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany L. Griles whose telephone number is 703.305.1839. The examiner can normally be reached on Monday through Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703.308.2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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